



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,261	12/02/2005	Kun-Kook Lee	BJS-3260-29	1787
23117 7590 03/30/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
CHEN, CATHERYNE				
ART UNIT		PAPER NUMBER		
1655				
MAIL DATE		DELIVERY MODE		
03/30/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/553,261

Applicant(s)

LEE ET AL.

Examiner

CATHERYNE CHEN

Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-11 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7, 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The Amendments filed on Jan. 21, 2009 has been received and entered.

Currently, Claims 7-11 are pending. Claims 7, 9-11 are examined on the merits.

Election/Restrictions

Applicant's election of compound formula III or phytantriol of Claim 9 in the reply filed on Oct. 25, 2007 is acknowledged.

Claim 8 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on Oct. 25, 2007.

Response to Amendment

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Response to Arguments

Applicant's arguments, filed Jan. 21, 2009, with respect to the rejection(s) of claim(s) 7, 9-10 under 35 U.S.C. 103(a) have been fully considered and are persuasive.

Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the rejections below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 7, 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albacarys et al. (US 6338855 B1) in view of Montastier et al. (US 5869034) and Yamauchi et al. (US 2001/0006648 A1).

Albacarys et al. teaches skin or hair care composition with areca catechu extract (column 22, line 66-67), licorice extract is also known as Glycyrrhiza glabra (column 23, line 20), phytantriol is also known as 3,7,11,15-tetramethylhexadecane-1,2,3-triol (column 41, line 44), disposition aid can be nonionic (column 29, lines 6), skin care

emulsions and mixtures thereof (Claim 4). However it does not teach biosome or liposome, non-ionic surfactant, ceramide bound to glycerine.

Yamauchi et al. teaches improving stability of drugs by incorporating the drugs in liposomes, which have a sphingolipid as the main component of the liposome membrane-constituting lipids (Abstract). Sphingophospholipid is desirable among sphingolipid as the liposomal membrane-constituting lipid, such as ceramide phosphorylglycerol, ceramide phosphorylglycerol phosphate (paragraph 0032). Liposomes or liposomal dispersion preparation include external preparations, such as suppositories, ointments, plasters, poultices, liniments, lotions, aerosols, and the like (paragraph 0045).

Montastier et al. teaches use of sphingolipids as active ingredient in the preparation of a cosmetic, sanitary or dermopharmaceutical composition for protecting skin and hair (Abstract).

Albacarys et al. teaches skin or hair care composition with areca catechu extract (column 22, line 66-67), licorice extract is also known as Glycyrrhiza glabra (column 23, line 20), phytantriol is also known as 3,7,11,15-tetramethylhexadecane-1,2,3-triol (column 41, line 44). Yamauchi et al. teaches improving stability of drugs by incorporating the drugs in liposomes, which have a sphingolipid as the main component of the liposome membrane-constituting lipids (Abstract). Sphingophospholipid is desirable among sphingolipid as the liposomal membrane-constituting lipid, such as ceramide phosphorylglycerol, ceramide phosphorylglycerol phosphate (paragraph 0032). Montastier et al. teaches use of sphingolipids as active ingredient in the

preparation of a cosmetic, sanitary or dermatopharmaceutical composition for protecting skin and hair (Abstract). Thus, an artisan of ordinary skill would reasonably expect that composition of areca catechu extract, licorice extract, phytantriol for cosmetic use can be incorporated into liposomes of ceramide phosphorylglycerol, ceramide phosphorylglycerol phosphate to stabilize the active ingredients could be used as the types of solution for cosmetic skin use as taught by the references. This reasonable expectation of success would motivate the artisan to use composition in liposomes for cosmetic skin in the reference composition. Thus, using composition for hair and skin is considered an obvious modification of the references.

Conclusion

No claim is allowed.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catheryne Chen whose telephone number is 571-272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catherine Chen
Patent Examiner

/Michael V. Meller/

Primary Examiner, Art Unit 1655